

EBA/CP/2014/43

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Consultation Paper

Draft Guidelines on arrears and foreclosure

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 4.

Comments are most helpful if they:

- respond to the question(s) stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 12.02.2015. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive summary

The Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive or MCD) was published in the Official Journal of the Commission on 28 February 2014 with a transposition date of 21 March 2016.

As stated in Recital 6, the Mortgage Credit Directive aims to develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection. Article 28 of the Mortgage Credit Directive sets out provisions in the area of arrears and foreclosure, and specifically requires that Member States shall adopt measures to encourage creditors to exercise reasonable forbearance before foreclosure proceedings are initiated.

In order to ensure that these high-level provisions will be implemented and supervised consistently across the 28 EU Member States, and to support the transposition of the MCD, the EBA is issuing and consulting on draft guidelines. The guidelines provide greater detail on how financial institutions should give effect to the relevant MCD provisions in Article 28, and thus contribute to the EBA's objective of achieving a convergence of supervisory practices for the Directives that fall into the EBA's scope of action.

The Guidelines establish requirements on policies and procedures; engagement with the consumer; provision of information and assistance to the consumer; resolution process; and documentation of dealings with the consumer and retention of records.

The Guidelines are based on the provisions of the *Opinion of the European Banking Authority on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties*, which was published on 13 June 2013, i.e. before the MCD was adopted, and which was reviewed by the EBA when developing the Guidelines. As a result, only relevant provisions within the Opinion were considered for these Guidelines.

3. Background and rationale

Background

The Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010 (“Mortgage Credit Directive” or “MCD”) was adopted on 4 February 2014 and published on 28 February 2014. The deadline for Member States (“MS”) to transpose the provisions of the Mortgage Credit Directive into national law is 21 March 2016.

The MCD aims to develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection (Recital 6 MCD).

For most consumers the commitment to a mortgage credit agreement is the most significant financial commitment that they will ever make. While the benefit to consumers of mortgage credit is the financial assistance that it gives them to acquire private ownership of residential immovable property, there are also risks associated with this lending which can result in detriment to consumers, to creditors and to financial stability generally. For example, creditors may initiate foreclosure proceedings because of arrears accrued on mortgage credit agreements.

As the MCD sets out in Recital 27, foreclosure can have significant consequences on consumers, and it states that it is appropriate to encourage creditors to deal proactively with emerging credit risk at an early stage and that the necessary measures are in place to ensure that creditors exercise reasonable forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated. The MCD, in Article 28, sets out provisions on arrears and foreclosure, and specifically requires that MS shall adopt measures to encourage creditors to exercise reasonable forbearance¹ before foreclosure proceedings are initiated.

In order to ensure that these high-level provisions will be implemented and supervised consistently across the 28 EU Member States, and to support the transposition of the MCD, the EBA is issuing and consulting on draft guidelines. The Guidelines provide greater detail on how financial institutions should give effect to the relevant MCD provisions in Article 28, and thus

¹ Per the EBA FINAL draft Implementing Technical Standards on supervisory reporting on forbearance and non-performing exposures under article 99(4) of Regulation (EU) No 575/2013, forbearance measures consist of concessions towards a debtor facing or about to face difficulties in meeting its financial commitments.

contribute to the EBA's objective of achieving a convergence of supervisory practices for the Directives that fall into the EBA's scope of action.

The Guidelines are based on the provisions of the *Opinion of the European Banking Authority on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties*, which was published on 13 June 2013, i.e. before the MCD was adopted, and which has been reviewed by the EBA when developing the Guidelines. As a result, only relevant provisions within the Opinion were considered for these Guidelines.

Rationale

As the MCD sets out in Recital 27 MCD foreclosure can have significant consequences on consumers, creditors and financial stability. Therefore it is in the interests of all three to consider and adopt measures to resolve payment difficulties prior to initiating foreclosure. These Guidelines will ensure that such measures are developed and adopted consistently across the MS.

In the development of these Guidelines the EBA considered existing data to establish at a high level if the issue of consumer defaults on credit agreements for residential immovable property and subsequent foreclosure, remains an issue across MS. A review of available statistics indicates that the level of household arrears has largely remained unchanged in the period 2010 to 2013 (inclusive). According to EU-Statistics on Income and Living Conditions (EU-SILC) instrument², the percentage of the population in the 28 MS who were in arrears on their mortgage or rent, utility bills or hire purchase has largely remained consistent between 2010 and 2013, i.e. 12% of the population was in arrears in 2010; 11.7% in 2011; 11.6% in 2012; and 11.8% in 2013.

The level of improvement in consumers' ability to meet their financial commitments has therefore been small across the 28 MS as a whole. Of the 32 states included in the statistics, 14 had arrears levels equal to or in excess of the level for the 28 MS in 2013 (11.8% of the population); 11 states had arrears levels less than the 2013 level and figures for the remaining seven states were unavailable at the time of writing. For the 25 states where figures for both 2012 and 2013 were available, the level of arrears increased in 12 states, decreased in 12 states and remained unchanged in one state. The statistics suggest that in the majority of states household arrears remains above the level for the 28 MS, thus suggesting that this remains a concern in those states.

While the level of arrears outlined above has largely been constant in the period 2010 to 2013, this trend may not be indicative of the trend for arrears going forward. The trend to date must be considered in the context of the current low interest rate environment and the positive impact that low interest rates have on consumers' ability to meet their credit commitments by maintaining or reducing their required payments. Current Eurozone and non-Eurozone interest rates are exceptionally low. While positive for borrowers a low interest rate environment has a

² http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_mdes05&lang=en [14 October 2014]

negative effect on savers and pensioners and as such current interest levels are unsustainable. In a 2010 World Bank paper on Mortgage Debt in Central and Eastern Europe³, consumers with variable interest credit agreements were identified as being particularly vulnerable to changes in interest rates. A change in interest rates was identified as a potential shock to consumers, similar to a change in consumers' income levels. Therefore the current level of arrears may deteriorate in an environment of increasing interest rates because the payment burden on consumers will also increase and may push currently performing loans into default.

As evidenced by the statistics above, household arrears persist in the 28 MS with little improvement. This lack of meaningful improvement coupled with the likelihood of increasing pressure on consumers' ability to meet their credit commitments in the future (following interest rate increases) indicates that the number of consumers in payment difficulties may increase going forward. This will be felt particularly in MS where the level of credit agreements that are subject to an adjustable rate is significant⁴. This likely upward trend will mean that dealing with consumers in payment difficulties will continue to be an on-going, if not a greater, task for creditors in the future. While foreclosure is an option for creditors when dealing with non-performing loans, the European Commission in Recital 27 encourages creditors to consider foreclosure as a last resort and instead to act with forbearance. The negative effects of foreclosure are identified in a paper on Household Debt and the European Crisis presented to the 2013 ECRI conference⁵, where it is asserted that foreclosure causes losses to society generally as well as failing to improve the situation of the creditors. This is because properties may be sold for less than they would achieve in an unforced sale; and as a result the prices of properties in the market decrease or properties become vacant which in turn can exacerbate the mortgage crisis.

In the context of the evidence set out above, it is important that consumers in payment difficulties are protected through requirements on arrears and foreclosure and that these consumers are treated consistently across the European Union. In that regard, the following Guidelines provide assistance to MS in the transposition of Article 28 MCD and assistance to competent authorities in giving effect to the provisions within this Article.

These Guidelines were developed after consideration of good practices currently in use by National Supervisory Authorities and creditors, which had previously been identified in the EBA Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties⁶.

³ Policy Research Working Paper 5202: Mortgage Finance in Central and Eastern Europe Opportunity or Burden? by Thorsten Beck, Katie Kibuuka, Erwin Tiongson. The World Bank Europe and Central Asia Region Poverty Reduction and Economic Management Sector Unit, February 2010

⁴ Per the European Mortgage Federation's Hypostat 2013: A Review of Europe's Mortgage and Housing Markets, the level of variable rate or adjustable rate credit agreements differs across the MS. In a number of MS the share of the national mortgage market which is subject to an adjustable rate was significant for the period 2007 to 2012.

⁵ Household Debt and the European Crisis: Research paper No. 13, June 2013, by Ales Chmler. Paper presented at the European Credit Research Institute Conference, 16 May 2013.

⁶ The EBA Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties was published on 13 June 2013.

Now that the Mortgage Credit Directive has been adopted, the EBA has decided to review the Opinion in light of the provisions of Article 28 MCD.

As a result, only relevant provisions within the Opinion were considered for these Guidelines, and they will assist competent authorities and financial institutions in giving effect to Article 28 MCD. The Opinion will be superseded by these Guidelines.

4. Draft Guidelines on arrears and foreclosure

Status of these Guidelines

This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*the EBA Regulation*). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom guidelines are addressed to comply with these guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at financial institutions.

Following the end of the consultation process, the EBA will finalise the draft guidelines considering the response to this consultation paper as well as any opinion of the Banking Stakeholder Group. The final guidelines will be published soon thereafter, and will be applicable from the transposition date of the Mortgage Credit Directive, which is 21 March 2016.

Reporting requirements

According to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance by the transposition date of the MCD of 21 March 2016. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

Title I - Subject matter, scope and definitions

Subject matter

These Guidelines set out greater detail on how financial institutions should give effect to the relevant provisions in Article 28 of Directive 2014/17/EU (Mortgage Credit Directive – MCD).

Scope

These Guidelines deal with the requirement set out in Article 28 MCD in respect of credit agreements which fall under the scope of and as specified in Article 3 MCD.

These Guidelines are addressed to competent authorities as defined in point (2) of Article 4 of Regulation (EU) No 1093/2010 (Regulation establishing the EBA – EBA Regulation).

Definitions

For the purposes of these Guidelines the definitions set out in Article 4 MCD apply.

Outsourcing

In the case where the activity of the creditor is in whole or in parts outsourced to third parties, or carried out by another entity in other ways, creditors should ensure that in doing so, that they comply with the requirements established in the CEBS Guidelines on outsourcing.⁷ This includes, in particular, guideline 2, which provides that “the ultimate responsibility for the proper management of the risks associated with outsourcing or the outsourced activities lies with an outsourcing institution’s senior management”.

⁷ See CEBS (2006), *Guidelines on outsourcing*, at <https://www.eba.europa.eu/documents/10180/104404/GL02OutsourcingGuidelines.pdf.pdf>

Title II- Requirements regarding arrears and foreclosure under Article 28 MCD

1. Establishment of policies and procedures

- 1.1 The creditor should establish procedures to detect early indications of consumers going into payment difficulties.
- 1.2 The creditor should establish policies and procedures for the effective handling of and engagement with consumers in payment difficulties.
- 1.3 The creditor should provide adequate training for staff dealing with consumers in payment difficulties.
- 1.4 The creditor should review these policies and procedures regularly.

2. Engagement with the consumer

- 2.1 When a consumer goes into payment difficulties, the creditor should work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.
- 2.2 The creditor should conduct meetings with the consumer in relation to their payment difficulties in privacy having regard to data protection legislation and not disclosing personal information to a third party without a consumer's consent.
- 2.3 The creditor, as well as any agents acting on behalf of the creditor, should maintain a level of contact and communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive.

3. Provision of information and assistance to the consumer

- 3.1 The creditor should have a consumer engagement policy in place. This should ensure that they provide adequate information, for example, through websites and written materials, and support for consumers in, or concerned about, payment difficulties.
- 3.2 The creditor should communicate clearly and in plain language.
- 3.3 The creditor should provide support and, at least, the following information to consumers in payment difficulties:
 - a) the number of payments either missed or only paid in part;
 - b) the total sum of the payment shortfall;
 - c) the charges incurred as a result of the payment shortfall;

- d) the importance of the consumer co-operating with the creditor to resolve the situation.

3.4 In cases where the consumer's payment difficulties persist, the creditor should provide the following information to the consumer:

- a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and
- b) information about available government/public schemes or support.

4. Resolution process

4.1 The creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps/forbearance measures to take. Forbearance measures consist of concessions towards a consumer facing, or about to face, difficulties in meeting his/her financial commitments⁸. Concessions to the consumer include:

1. a total or partial refinancing of a credit agreement; and/or
2. a modification of the previous terms and conditions of a credit agreement, which may include amongst others:
 - a) extend the term of the mortgage;
 - b) change the type of the mortgage;
 - c) defer payment of all or part of the instalment repayment for a period;
 - d) change the interest rate;
 - e) offer a payment holiday.

5. Documentation of dealings with the consumer and retention of records

5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate

⁸ EBA FINAL draft Implementing Technical Standards on supervisory reporting on forbearance and non-performing exposures under article 99(4) of Regulation (EU) No 575/2013.

<http://www.eba.europa.eu/documents/10180/449824/EBA-ITS-2013-03+Final+draft+ITS+on+Forbearance+and+Non-performing+exposures.pdf/a55b9933-be43-4cae-b872-9184c90135b9>

records of its dealings with the consumer in payment difficulties for a reasonable period of time.

Title III- Final provisions and implementation

Competent authorities should implement these Guidelines by incorporating them in their supervisory processes and procedures by 21 March 2016.

Overview of questions for consultation

Question 1: Do you agree with the proposed Guidelines? If not, outline why you disagree and how the Guidelines could be improved. Please respond separately for each of the five Guidelines.

Question 2: Are there any additional requirements that you would suggest adding to the Guidelines? If so, outline the reason(s) for each proposed additional requirement.

5. Accompanying documents

5.1 Cost-benefit analysis / impact assessment

5.1.1 Problem identification

Mortgage borrowing for the purchase of private real estate property is one of the most important financial commitments of a large number of consumers of financial services. Firstly, the borrowed amount often significantly exceeds the actual wealth and annual income of mortgage borrowers. Secondly, the length of the commitment often exceeds a specific period in the life cycle of borrowing individuals. Thirdly, the decision to borrow and purchase private real estate property by a mortgage loan significantly affects multiple areas of the consumer's life, including family situation.

For this set of reasons, problems related to, for instance, the repayment of a mortgage loan and potential foreclosure proceedings risk causing severe detriment to consumers. At the same time, despite having some incentive to seize and sell the property, creditors entering foreclosure proceedings might only be able to achieve a reduced price, all the more in an environment of declining real estate markets and market-wide asset devaluation dynamics. Depending on the size of the national mortgage market, the degree of conservativeness of lending decisions, and general economic conditions, defaults of a large number of individual borrowers can put banks and mortgage lenders (creditors) under severe stress, threatening the solvency of individual institutions and potentially even the soundness of national and global banking systems. Recent economic history provides illustrative examples of the risks which destructive developments in real estate markets can pose to the stability of the entire financial system.⁹¹⁰

5.1.2 Policy objectives

The general, high-level objectives of these Guidelines are the protection of consumers, the safety and soundness of the European banking system, and the stability, efficiency and integrity of the financial system. In addition, they aim at promoting convergence of regulatory frameworks and the functioning of the internal market in the EU. More specifically, these Guidelines are intended to improve the protection of mortgage borrowers in payment difficulties. At a technical level, they are meant to assist competent authorities in the implementation of Article 28 of the Mortgage Credit Directive and its application to credit institutions and non-credit institutions.

⁹ EBA: Consumer Trends Report (2014)

¹⁰ EU COM: National Measures and Practices to avoid Foreclosure Procedures for Residential Mortgage Loans (2011)

5.1.3 Baseline scenario and options considered

To address the above-mentioned issues, EBA could either

- i. Keep its current Opinion on Good Practices for the Treatment of Borrowers in Mortgage Payment Difficulties (Option 1)
- ii. Convert the practices of that Opinion which are relevant to Art. 28 MCD into Guidelines and revise the remaining parts of that Opinion (Option 2)

whereby Option 1 coincides with the baseline scenario.

5.1.4 Analysis of costs

There would be no incremental costs of choosing Option 1, neither for competent authorities, nor for creditors or consumers. Analogously, none of the potential benefits could be reaped.

Survey

In order to inform the Impact Assessment of the adoption of Option 2, and in particular, the impact of these proposed EBA guidelines in terms of the compliance effort that will need to be made by financial institutions, the EBA gathered information from national competent authorities about the extent to which their existing national requirements already meet the Guidelines. The EBA received detailed responses regarding credit institutions (CIs) from 22 national competent authorities and responses regarding non-credit institutions (NCIs) from 13 national competent authorities. In a number of MS, non-credit institutions do not provide mortgage credit, while in other cases it has not yet been determined which authority will supervise non-credit institutions when providing mortgage credit. Therefore, several MS did not include responses to the survey for non-credit institutions.

Table 1 below shows, for each guideline and for each creditor type (credit institution and non-credit institution), the extent to which existing national requirements meet, exceed or are lower than the proposed Guidelines, or whether there are no national requirements in place at all.

Table 1: Overview of responses

			Number of MS where proposed guidelines are already met		Number of MS where proposed guidelines are not currently met		Total responses	Percentage of MS where the proposed Guideline is already met or exceeded	
			MS where the proposed Guideline is already met	MS where higher requirements than the proposed Guideline are already in place	MS where lower requirements than the proposed Guideline are in place	MS where no requirements at all are in place			
G1	1.1	CI	14	2	3	3	22	73%	
		NCI	7	0	2	4	13	54%	
	1.2	CI	10	3	6	3	22	59%	
		NCI	5	2	1	5	13	54%	
	1.3	CI	7	1	7	7	22	36%	
		NCI	4	1	1	7	13	38%	
	1.4	CI	6	0	8	8	22	27%	
		NCI	2	0	4	7	13	15%	
G2	2.1	CI	11	1	6	4	22	55%	
		NCI	5	1	2	5	13	46%	
	2.2	CI	14	0	3	5	22	64%	
		NCI	6	0	0	7	13	46%	
	2.3	CI	10	2	3	7	22	55%	
		NCI	5	1	0	7	13	46%	
G3	3.1	CI	3	2	6	11	22	23%	
		NCI	1	2	3	7	13	23%	
	3.2	CI	11	1	2	8	22	55%	
		NCI	6	1	0	6	13	54%	
	3.3	CI	9	1	8	4	22	45%	
		NCI	7	1	3	2	13	62%	
	3.4	CI	8	2	7	5	22	45%	
		NCI	6	2	3	2	13	62%	
	G4	4.1	CI	9	2	5	6	22	50%
			NCI	4	2	2	5	13	46%
G5	5.1	CI	5	2	4	11	22	32%	
		NCI	2	2	0	9	13	31%	

The following is a summary analysis of the likely cost impact to creditors in implementing each of the proposed Guidelines.

G1: Establishment of policies and procedures

The majority of MS already have requirements in place on credit institutions (16 of 22 MS) and non-credit institutions (7 of 13 MS) that meet or exceed Guideline 1.1. Therefore there should be limited costs to creditors to implement this Guideline.

To a lesser extent, MS already have requirements in place on credit institutions (13 of 22 MS) and non-credit institutions (7 of 13 MS) that meet or exceed Guideline 1.2. It is likely therefore that costs will be incurred by creditors in a small number of MS to establish policies and procedures for the effective handling of and engagement with consumers in payment difficulties.

In terms of Guidelines 1.3 and 1.4, there is a significantly lower number of MS that have requirements in place for both types of creditor that meet or exceed the proposed Guidelines. In the case of Guideline 1.3 regarding the provision of adequate training for staff dealing with consumers in payment difficulties, 8 MS have requirements on credit institutions and 5 MS have requirements on non-credit institutions that meet or exceed this guideline. It is likely therefore, that creditors will incur initial set up costs and on-going costs to implement this Guideline. Similarly in the case of Guideline 1.4 which requires that creditors review the policies and procedures regularly, there will be small costs to implement this Guideline incurred by credit institutions in 16 MS and non-credit institutions in 11 MS. However, of these MS 8 and 4 respectively already have lower requirements in place, therefore creditors already must comply with some requirements in this area so will only incur limited costs.

G2: Engagement with the consumer

More than half of MS already have requirements in place on creditors that meet or exceed each of the points under this Guideline. For credit institutions, there are lower requirements or no requirements in place in 10 MS for Guideline 2.1, 8 MS for Guideline 2.2 and 10 MS for Guideline 2.3. A similar situation exists for non-credit institutions whereby lower requirements or no requirements at all are in place in 7 MS for Guideline 2.1, 7 MS for Guideline 2.2 and 7 MS for Guideline 2.3. Costs will be incurred by both creditor types to put systems in place to implement this Guideline in the MS where such requirements are not already in place.

G3: Provision of information and assistance to the consumer

A significant number of MS (17 for credit institutions and 10 for non-credit institutions) do not already have requirements in place that meet Guideline 3.1, although of these 6 MS have lower requirements than the proposed Guidelines in place for credit institutions and 3 MS have lower requirements in place for non-credit institutions. There will therefore be initial costs to creditors to put in place a consumer engagement policy and to provide adequate information, for example, through websites and written materials, and support for consumers in, or concerned about, payment difficulties. Compliance with this Guideline will also place on-going costs on creditors as they update their consumer information.

Higher numbers of MS, than for Guideline 3.1, have already requirements on credit institutions in place that meet or exceed Guideline 3.2 (12 MS), Guideline 3.3 (10 MS) and Guideline 3.4 (10 MS). However, costs will be incurred by creditors in half of the MS to implement these Guidelines.

G4: Resolution process

Currently 11 MS who responded to the survey have national requirements on credit institutions that meet or exceed this Guideline. 6 of 13 MS also place requirements on non-credit institutions that meet or exceed the Guideline. Therefore, in some MS both types of creditor would need to incur one-off costs for the implementation of this Guideline and potentially also some modest, but unavoidable, costs related to the more frequent use of forbearance policies and abstinence from quick foreclosure proceedings¹¹.

G5: Documentation of dealings with the consumer and retention of records

Where systems are not already in place to document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and to make and retain adequate records of dealings with the consumer in payment difficulties for a reasonable period of time, creditors may incur some one-off, as well as on-going costs in introducing and maintaining these systems. This is likely to be a cost to both types of creditor as 15 of 22 MS in the case of credit institutions and 9 of 13 MS in the case of non-credit institutions do not already have requirements in place that meet or exceed this Guideline.

In summary, as Table 1 shows, there is a divergence in the level of requirements that are already in place across MS. This will result in creditors having to incur once-off and ongoing costs to implement these Guidelines.

Also Option 2 would imply one-off costs for competent authorities in the form of adjustments to national regulatory frameworks and on-going costs due to required modifications of supervisory practices. While costs will be incurred to implement these Guidelines, cooperation between competent authorities could be facilitated across the EU as consequence of the more harmonised framework on arrears and foreclosure in residential mortgage markets.

5.1.5 Analysis of benefits

The largest benefits of Option 2 would accrue to mortgage borrowers who would see their exposure to detriment and adverse economic and social effects to be significantly reduced by these Guidelines¹²¹³. Furthermore, consumers would benefit from more integrated EU mortgage markets.

¹¹ EU COM: Impact Assessment accompanying the Directive on Credit Agreements relating to residential property (2011)

¹² EU COM: The Costs and Benefits of Integration of EU Mortgage Markets (2005)

¹³ EU COM: Study on the Costs and Benefits of the different policy options for mortgage credit (2009)

As illustrated by Table 1, there is currently inconsistency across MS in terms of requirements on arrears and foreclosure, with many MS having few requirements currently in place. The harmonisation of the regulatory framework across different types of mortgage lenders would reduce the risk of inter-sectoral regulatory arbitrage and improve market integrity in general.

5.1.6 Overall assessment and conclusion

Having regard to stakeholders' costs and benefits, the conversion of the practices of the current EBA Opinion relevant to Art. 28 MCD into Guidelines and the revision of the remaining parts of that Opinion is the preferred option.